



Helenair

State to pay developer \$3M in Nob Hill deal

APRIL 10, 2012 12:11 AM • BY CHARLES S. JOHNSON IR STATE BUREAU

A district judge Monday approved the state's \$3 million settlement with a Billings developer in a lawsuit over the state's termination of leases for a large new office that was never built in Helena's high-end Nob Hill subdivision.

District Judge Jeffrey Sherlock of Helena signed off on the deal reached Saturday by attorneys for SBC Archway and the state.

He had scheduled a five-day jury trial on SBC Archway's \$14 million breach-of-contract lawsuit against the state to begin Monday.

The deal contained standard settlement language saying that the state, by agreeing to pay \$3 million, was not admitting liability. Each side will pay its own costs and attorney fees.

It will be up to the 2013 Legislature to appropriate the \$3 million to pay the settlement. Ten percent interest will be charged on whatever balance of the \$3 million hasn't been paid by May 1, 2013.

In July 2009, SBC Archway, a limited liability company, sued the state over breach of contract, seeking \$3.9 million in costs for the aborted project and \$9.9 million in lost profits and additional damages.

The lawsuit came after Schweitzer's former budget director, David Ewer, terminated the leases after the 2009 Legislature refused to appropriate money for rent for agencies in the proposed building.

On Monday, Schweitzer said the state's lawyers told him the developer had no legal case. The odds were 75 percent to 25 percent the state's favor, he said, but there was some uncertainty because the case was going to a jury.

"As much as you'd rather pay nothing, it was a small risk," Schweitzer said. "At the end of the day, kind of like a dog with its tail between the legs, they (the developers) came and said would you give us \$3 million? It tells you what they thought of their case when they settled on the 23rd hour for 20 percent of what they were alleging."

Glen Rickett of Billings, one of the three managers and members of SBC Archway, declined to comment on the settlement.

However, Cary Hegreberg, executive director of the Montana Contractors Association, criticized the state's handling of leases as "just plain wrong" and was happy that "at least some of the damage was rectified."

"The gratifying thing that is obvious is that the state was not holding a winning hand, so

they decided to cut their losses and reach a settlement," Hegreberg said. "We think it's been evident all along that the state of Montana had no legal authority to cancel a valid, binding contract."

"It at least sends a message that contracts work both ways," he added. "Contractors are held liable to their terms in their dealings with state agencies, and the state is similarly held accountable."

In June 2007, the state Department of Administration had contracted with SBC Archway to build a 105,600 square-foot office facility to be leased to the state to provide offices for 344 employees from three departments.

The building site was moved from its original location at Cottonwood West Subdivision, a commercial site northeast of Bill Roberts Golf Course, to the Nob Hill Subdivision, one of Helena's priciest developments, in the city's South Hills. Both Schweitzer and Ewer said the developer, not the state, wanted the building site moved.

In June 2008, the state signed leases agreeing to pay more than \$232,000 a month in rent to the developer for 30 years — or more than \$80 million over the life of the contract.

SBC Archway contended that Ewer asked to delay the project for a year to avoid political fallout during the governor's 2008 re-election campaign.

Schweitzer said called that allegation "patently false," saying no one would have "bet more than 10 cents" that his Republican opponent, Roy Brown, would win.

Ewer said the fallout wasn't over Schweitzer's race, but coming from Nob Hill residents and the Helena City Commission unhappy with the project, which could have a negative consequence in the 2009 Legislature.

The developer agreed on the delay, but insisted on a 5.87 percent rent increase to recoup lost revenues.

Although Schweitzer put the seven "decision packages" in his proposed budget to provide for the higher rents, the 2009 Legislature rejected them.

SBC Archway said Ewer broke with longstanding practice by directing his staff to specifically identify the project in legislative budget proposals. Ewer said he in fact followed the traditional practice.